



May 9, 2000

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Legal and Compliance Division
Texas Department of Insurance
P. O. Box 149104
Austin, Texas 78714-9104

OR2000-1796

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134940.

The Texas Department of Insurance ("TDI") received a request for rate filings by Progressive County Mutual Insurance Company ("Progressive County Mutual") from January 1, 1993, to the present, and all correspondence between that company and TDI concerning zip code rating during that same period. You assert no exception to the release of the information. However, you advise this office that the requested information may involve the proprietary or property interests of Progressive County Mutual. Section 552.305(d) requires TDI to notify a person whose proprietary information may be excepted from required disclosure by section 552.101, 552.110, 552.113, or 552.131 of the Government Code of the request for an attorney general decision. You indicate that you have notified Progressive County Mutual of the request by letter dated March 7, 2000. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances).

Progressive County Mutual has not submitted to this office any explanation as to why the requested information should not be released. Gov't Code § 552.305(d)(2)(B) (providing that third party must respond to attorney general not later than 10th business day after receiving notice of request). Therefore, we have no basis to conclude that the responsive information is excepted from disclosure. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). Thus, TDI must release the requested information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Patricia Michels Anderson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/ljp

Ref: ID# 134940

Encl. Submitted documents

cc: Mr. Richard South
Wright & Greenhill
P. O. Box 2166
Austin, Texas 78768
(w/o enclosures)

Mr. Donald Moser
Market Manager
Progressive County Mutual Company
P. O. Box 149145
Austin, Texas 78714-9145
(w/o enclosures)

Ms. Judy Deaver
Auto Section
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104
(w/o enclosures)